

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

and

STATE OF OREGON,

Plaintiff-Intervenor,

v.

ERNEST MONIZ, Secretary of the
United States Department of Energy,
and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO: 2:08-CV-5085-RMP

AMENDED CONSENT DECREE
BETWEEN DEPARTMENT OF
ENERGY AND STATE OF OREGON

BEFORE THE COURT are the Department of Energy's and the State of Oregon's Motions to Amend Consent Decree, **ECF Nos. 76 and 99**. For the reasons set forth in the corresponding Opinion, the Court hereby orders that the Consent Decree between the Department of Energy and the State of Oregon, **ECF No. 60**, be modified as follows:

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AMENDED CONSENT DECREE BETWEEN DEPARTMENT OF ENERGY
AND STATE OF OREGON ~ 1

1 **I. Paragraph 3**

2 Paragraph 3 of the Consent Decree, ECF No. 60 at 2–3, is hereby
3 **VACATED** and is **SUPERSEDED** by the following:

4 3. DOE shall, on a quarterly basis, submit to Oregon, on the same day that it
5 submits to Ecology,¹ a written report documenting waste treatment plant
6 (WTP) construction and startup activities and tank retrieval activities at
7 Hanford that occurred during the period covered by the report. This written
8 report shall provide the status of progress made during the reporting period
9 and shall include:

10 a. A brief description of project accomplishments and project issues
11 encountered during the reporting period and/or expected in the next
12 three (3) months;

13 b. A definitive statement describing whether or not DOE has complied
14 with milestones that have already come due as of the date of the

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16 ¹ The State of Washington is also referred to as “Ecology,” shorthand for the
17 Washington State Department of Ecology, throughout the following Consent
18 Decree modifications. The Court refers to the State of Washington as “Ecology” in
19 order for the modifications to remain consistent with the remaining, unmodified
20 Consent Decree sections. *See* ECF No. 60. This footnote is for explanatory
21 purposes only, and does not constitute part of the modified Consent Decree.

1 report, and how any missed milestones may affect compliance with
2 other milestones;

3 c. Where applicable, a description of actions initiated or otherwise
4 taken to address any schedule slippage;

5 d. Budget/cost status;

6 e. Copies of written directives given by DOE to the contractors for
7 work required by the Decree entered in this case between DOE and
8 Ecology, if requested by Oregon.

9 f. A description of progress made towards resolving the five
10 outstanding WTP technical issues; and

11 g. An accounting of total labor hours expended on SST retrieval,
12 specifying the total percentage of hours worked utilizing self-
13 contained breathing apparatus.

14 h. The Consent Decree entered between DOE and Ecology permits
15 Ecology to request a hearing should Ecology demonstrate good
16 cause that DOE has not been forthcoming as pertains to the quarterly
17 reports. Ecology will serve Oregon with any request for a hearing,
18 and Oregon representatives may attend and participate in such a
19 hearing. Such permission to attend shall not vest Oregon with any
20 rights as a party to those proceedings. Oregon's unavailability after
21 reasonable notice shall not require the delay or rescheduling of such

1 hearings.

2 **II. Paragraph 5**

3 Paragraph 5 of the Consent Decree, ECF No. 60 at 3, is hereby **VACATED**
4 and is **SUPERSEDED** by the following:

5 5. In the event DOE determines that a serious risk has arisen that DOE may
6 be unable to meet a schedule as required in Section IV of the Consent
7 Decree entered in this case between DOE and Ecology, DOE shall notify
8 Oregon, on the same day that it notifies Ecology.

9 a. The Consent Decree entered between DOE and Ecology permits
10 Ecology to request a meeting and/or a hearing should Ecology
11 demonstrate good cause that DOE has not been forthcoming as
12 pertains to the “serious risk.” Ecology will serve Oregon with any
13 request for a meeting or hearing, and Oregon representatives may
14 attend and participate in such a meeting or hearing. Such permission
15 to attend shall not vest Oregon with any rights as a party to those
16 proceedings. Oregon’s unavailability after reasonable notice shall
17 not require the delay or rescheduling of such meetings or hearings.

18 **III. Paragraph 5A**

19 A new Paragraph 5A is added to the Consent Decree as follows:

20 5A. Applicability of Federal Rule of Evidence 408. Federal Rule of

21 Evidence 408 does not apply to the above reporting requirements as the

1 reports are not an offer of compromise but comprise a mandatory
2 element of an agreed-to and concluded compromise in the form of this
3 Consent Decree.

4 a. The Consent Decree entered between DOE and Ecology permits
5 Ecology to request a hearing should Ecology find that DOE has
6 asserted Rule 408. Ecology will serve Oregon with any request for
7 a hearing, and Oregon representatives may attend and participate in
8 such a hearing. Such permission to attend shall not vest Oregon with
9 any rights as a party to those proceedings. Oregon's unavailability
10 after reasonable notice shall not require the delay or rescheduling of
11 such hearings.

12 **IT IS SO ORDERED.**

13 The District Court Clerk is directed to enter this Order and provide copies to
14 counsel.

15 **DATED** this 11th day of March 2016.

16 s/ Rosanna Malouf Peterson
17 ROSANNA MALOUF PETERSON
18 United States District Judge
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